

House File 2234 - Introduced

HOUSE FILE 2234
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 557)

A BILL FOR

1 An Act relating to marital agreements, and including effective
2 date and applicability provisions.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 249A.3, subsection 11, paragraph d, Code
2 Supplement 2009, is amended to read as follows:

3 *d.* Unless a surviving spouse is precluded from making an
4 election under the terms of a ~~premarital~~ marital agreement as
5 defined in section 596.1, the failure of a surviving spouse to
6 take an elective share pursuant to chapter 633, division V,
7 constitutes a transfer of assets for the purpose of determining
8 eligibility for medical assistance to the extent that the value
9 received by taking an elective share would have exceeded the
10 value of the inheritance received under the will.

11 Sec. 2. Section 596.1, Code 2009, is amended to read as
12 follows:

13 **596.1 Definitions.**

14 As used in this chapter:

15 1. "Marital agreement" means any of the following:

16 a. A premarital agreement.

17 b. An amendment to a premarital agreement made between
18 present spouses, but only relating to post-death matters.

19 c. An agreement or an amendment to an agreement between
20 present spouses, but only relating to post-death matters.

21 2. "Party" means a person who has entered into a marital
22 agreement.

23 ~~1.~~ 3. "Premarital agreement" means an agreement between
24 prospective spouses made in contemplation of marriage and to be
25 effective upon marriage.

26 4. "Post-death matter" includes but is not limited to the
27 disposition of the parties' individually or jointly owned
28 assets upon the death of either or both parties; the making of
29 a will, trust, or other arrangements for the disposition of
30 property upon the death of either or both parties; ownership
31 rights in life insurance policies and retirement plans and the
32 disposition of the death benefits of any such policy or plan;
33 and the limitation or expansion of spousal elective shares
34 pursuant to chapter 633, division V.

35 ~~2.~~ 5. "Property" means an interest, present or future,

1 legal or equitable, vested or contingent, in real or personal
2 property, including income and earnings.

3 Sec. 3. Section 596.2, Code 2009, is amended to read as
4 follows:

5 **596.2 Construction and application.**

6 This chapter shall be construed and applied to effectuate
7 its general purpose ~~to make uniform the law with respect to~~
8 ~~premarital agreements.~~

9 Sec. 4. Section 596.3, Code 2009, is amended to read as
10 follows:

11 **596.3 Short title.**

12 This chapter may be cited as the "*Iowa Uniform Premarital*
13 *Marital Agreement Act*".

14 Sec. 5. Section 596.4, Code 2009, is amended to read as
15 follows:

16 **596.4 Formalities.**

17 1. A premarital marital agreement must be in writing and
18 must be signed by both prospective spouses. It parties.

19 2. A marital agreement between present spouses must be
20 signed by both parties prior to the filing of an action for
21 dissolution of marriage, for legal separation, or for separate
22 maintenance.

23 3. A marital agreement is enforceable without consideration
24 other than the marriage.

25 4. Both parties to the a marital agreement shall must
26 execute all documents necessary to enforce the agreement.

27 Sec. 6. Section 596.5, Code 2009, is amended to read as
28 follows:

29 **596.5 Content.**

30 1. Parties Subject to the limitations of a marital agreement
31 between present spouses, which as specified in section
32 596.1, subsection 1, shall only relate to post-death matters,
33 parties to a premarital marital agreement may contract with
34 respect to the following:

35 a. The rights and obligations of each of the parties in any

1 of the property of either or both of them whenever and wherever
2 acquired or located.

3 ~~b.~~ The right rights of possession, ownership, or control,
4 including but not limited to the rights to buy, sell, use,
5 transfer, make a gift of, exchange, abandon, lease, consume,
6 expend, assign, create a security interest in, mortgage,
7 encumber, dispose of, or otherwise manage and control property.

8 ~~c.~~ The disposition of property upon separation, dissolution
9 of the marriage, death, or the occurrence or nonoccurrence of
10 any other event.

11 ~~d.~~ The making of a will, trust, or other arrangement to
12 carry out the provisions of the marital agreement.

13 ~~e.~~ The ownership rights in ~~and disposition of the death~~
14 ~~benefit from~~ a life insurance policy and the establishment of
15 rights of beneficiaries to the benefits of such policy.

16 ~~f.~~ The rights and obligations in benefits available or to be
17 available under an employee benefit or retirement plan, except
18 to the extent federal law prevents a binding agreement with
19 respect to such rights and obligations.

20 ~~f.~~ g. The choice of law governing the construction of the
21 marital agreement.

22 ~~g.~~ h. Any other matter, including the personal rights and
23 obligations of the parties, not in violation of public policy
24 or a statute imposing a criminal penalty.

25 2. A marital agreement is not enforceable unless the
26 agreement contains a statement of the types of rights that
27 could be affected by the marital agreement in an all capital
28 letter typeface and font size as large as the largest typeface
29 and font contained in the document. The following statement or
30 a statement of like import, contained within the document shall
31 be acceptable for this purpose:

32 "BE ADVISED, BY SIGNING THIS DOCUMENT, YOU MAY BE GIVING
33 UP LEGAL RIGHTS, SUCH AS THE RIGHTS TO OWN OR OCCUPY YOUR
34 HOMESTEAD, RIGHTS TO A STATUTORY SHARE OF YOUR SPOUSE'S ASSETS
35 UPON DEATH, RIGHTS TO COURT DETERMINATIONS OF DISTRIBUTIONS OF

1 PROPERTY UPON DISSOLUTION OF MARRIAGE, AND OTHER RIGHTS YOU
2 MAY HAVE BY REASON OF MARRIAGE. YOU MAY ALSO BE EXPANDING OR
3 RESTRICTING THOSE TYPES OF RIGHTS OR EXPANDING OR RESTRICTING
4 THE COURT'S POWERS TO DETERMINE THESE ISSUES."

5 ~~2.~~ 3. The right of a spouse or child to support, whether
6 during the lifetime or after the death of a party, shall not be
7 adversely affected by a ~~premarital~~ marital agreement.

8 Sec. 7. Section 596.6, Code 2009, is amended to read as
9 follows:

10 **596.6 Effective date of agreement.**

11 1. A ~~premarital~~ marital agreement becomes effective upon
12 the marriage, if signed by both of the parties prior to the
13 marriage.

14 2. If a marital agreement is signed by the parties during
15 their marriage, the marital agreement becomes effective on the
16 effective date stated in the marital agreement. If no such
17 effective date is stated in the marital agreement, the marital
18 agreement becomes effective upon the latest date of signature
19 by the parties.

20 Sec. 8. Section 596.7, Code 2009, is amended to read as
21 follows:

22 **596.7 Revocation and amendment.**

23 1. Revocation. After marriage, a ~~premarital~~ marital
24 agreement may be revoked, in whole or in part, only as follows:

25 ~~1.~~ a. By a written agreement signed by both ~~spouses~~
26 parties. The revocation is enforceable without consideration.

27 ~~2.~~ b. ~~To revoke a premarital~~ By either party to the
28 marital agreement without the consent of the other
29 ~~spouse party, the person seeking revocation must prove one~~
30 ~~or more~~ if the party seeking revocation proves any of the
31 following:

32 ~~a.~~ (1) The person party seeking revocation did not execute
33 the marital agreement voluntarily.

34 ~~b.~~ (2) The marital agreement was unconscionable when it
35 was executed.

1 ~~c.~~ (3) Before the execution of the marital agreement the
2 person party seeking revocation was not provided a fair and
3 reasonable disclosure of the property or financial obligations
4 of the other spouse party; and the person party seeking
5 revocation did not have, or reasonably could not have had, an
6 adequate knowledge of the property or financial obligations of
7 the other spouse party; and such disclosure would have been
8 material to the decision of the party seeking revocation to
9 execute the marital agreement.

10 (4) Before the execution of the marital agreement the party
11 seeking revocation was not given a reasonable opportunity to
12 obtain independent legal representation with respect to the
13 marital agreement.

14 c. If the revocation of one or more provisions of the
15 marital agreement, or the application of the revocation of such
16 a provision to a party is upheld by the court, any revoked
17 provision shall be severed from the remainder of the marital
18 agreement, unless the marital agreement states otherwise, and
19 shall not affect the remaining provisions.

20 2. Amendment. A marital agreement may be amended by
21 a written agreement signed by both parties. An amendment
22 is subject to the limitations of an amendment to a marital
23 agreement which, as specified in section 596.1, subsection 1,
24 shall only relate to post-death matters, and subject to the
25 enforcement provisions of section 596.8.

26 3. Limits on amendment and revocation. A marital
27 agreement cannot be amended or revoked by an agent, guardian,
28 conservator, or other legal representative of either party, or
29 after the death of either party, except as provided pursuant
30 to subsection 1, paragraph "b", relating to revocation without
31 the consent of the other party.

32 Sec. 9. Section 596.8, Code 2009, is amended to read as
33 follows:

34 **596.8 Enforcement.**

35 1. A ~~premarital~~ marital agreement is not enforceable if the

1 person or party against whom enforcement is sought proves ~~any~~
2 ~~of the following:~~

3 ~~1. The person did not execute the agreement voluntarily.~~

4 ~~2. The agreement was unconscionable when it was executed.~~

5 ~~3. Before the execution of the agreement the person was~~
6 ~~not provided a fair and reasonable disclosure of the property~~
7 ~~or financial obligations of the other spouse; and the person~~
8 ~~did not have, or reasonably could not have had, an adequate~~
9 ~~knowledge of the property or financial obligations of the other~~
10 ~~spouse that such person or party could have revoked the marital~~
11 ~~agreement pursuant to section 596.7, subsection 1, paragraph~~
12 ~~"b", relating to revocation without consent of the other party.~~

13 2. If a provision one or more of the provisions of the
14 marital agreement or the application of the provision to a
15 party is found determined by the court to be unenforceable
16 pursuant to this section, the unenforceable provision shall be
17 severed from the remainder of the marital agreement, unless the
18 marital agreement states otherwise, and shall not affect the
19 remaining provisions, or application, of the agreement which
20 can be given effect without the unenforceable provision.

21 3. Other than the determination of the issue of
22 unconscionability, actions with respect to enforcement of a
23 marital agreement shall be decided by the court as a matter of
24 equity.

25 Sec. 10. Section 596.9, Code 2009, is amended to read as
26 follows:

27 **596.9 Unconscionability.**

28 In any action under this chapter to revoke or enforce a
29 ~~premarital~~ marital agreement the issue of unconscionability of
30 a ~~premarital~~ marital agreement shall be decided by the court
31 as a matter of law.

32 Sec. 11. Section 596.10, Code 2009, is amended to read as
33 follows:

34 **596.10 Enforcement — void marriage.**

35 If a marriage is determined to be void, an agreement that

1 would otherwise have been a ~~premarital~~ marital agreement
2 is enforceable only to the extent necessary to avoid an
3 inequitable result.

4 Sec. 12. Section 596.11, Code 2009, is amended to read as
5 follows:

6 **596.11 Limitation of actions.**

7 Any statute of limitations applicable to an action asserting
8 a claim for relief under a ~~premarital~~ marital agreement is
9 tolled during the marriage of the parties ~~to the agreement~~.

10 However, equitable defenses limiting the time for enforcement,
11 including laches and estoppel, are available to either party.

12 Sec. 13. Section 596.12, Code 2009, is amended to read as
13 follows:

14 **596.12 Effective date.**

15 1. This As it relates to premarital agreements, this chapter
16 takes effect on January 1, 1992, and applies to any premarital
17 agreement executed on or after that date, in accordance
18 with the statutory provisions in effect as of the date of
19 the premarital agreement. This chapter does not affect the
20 validity under Iowa law of any premarital agreement entered
21 into prior to January 1, 1992.

22 2. As it relates to amendments to premarital agreements and
23 to marital agreements entered into after marriage, this chapter
24 takes effect July 1, 2010, and applies to any such amendments
25 or agreements executed on or after that date.

26 Sec. 14. Section 633.246A, Code 2009, is amended to read as
27 follows:

28 **633.246A Medical assistance eligibility.**

29 Unless precluded from doing so under the terms of a
30 ~~premarital~~ marital agreement as defined in section 596.1, the
31 failure of a surviving spouse to make an election under this
32 division constitutes a transfer of assets for the purpose of
33 determining eligibility for medical assistance pursuant to
34 chapter 249A to the extent that the value received by making
35 the election would have exceeded the value of property received

1 absent the election.

2

EXPLANATION

3 This bill amends Code chapter 596 (premarital agreements)
4 to allow for marital agreements which include premarital
5 agreements, certain amendments to premarital agreements, and
6 the creation of agreements or amendments to agreements between
7 present spouses. An amendment to a premarital agreement or an
8 agreement or amendment to an agreement between present spouses
9 is effective only to the extent it is limited to post-death
10 matters. The bill provides for protection of the parties
11 including that the agreement must not be unconscionable at the
12 time it is entered into; the agreement must include a provision
13 that states the rights a party may be giving up; an agent is
14 prohibited from amending or revoking a marital agreement on
15 behalf of a party; and unconscionability is determined by the
16 court as a matter of law while all other matters are determined
17 in equity. The bill provides for revocation and amendment of
18 marital agreements, places limits on amendments and revocations
19 of marital agreements, provides for enforcement, and makes
20 conforming changes.

21 The bill provides that as it relates to premarital
22 agreements, the amended Code chapter takes effect on January 1,
23 1992, and applies to any premarital agreement executed on or
24 after that date, in accordance with the statutory provisions
25 in effect as of the date of the premarital agreement. The bill
26 directs that the Code chapter does not affect the validity
27 under Iowa law of any premarital agreement entered into prior
28 to January 1, 1992. Additionally, the bill provides that as
29 the Code chapter relates to amendments to premarital agreements
30 and to marital agreements entered into after marriage, the
31 amended Code chapter takes effect July 1, 2010, and applies to
32 any such amendments or agreements executed on or after that
33 date.